A bill to be entitled
An act relating to building design; amending s. 163.3202, F.S.; providing that certain regulations relating to building design elements may not be applied to certain structures; providing exceptions; defining the term "building design elements"; providing applicability; amending s. 553.73, F.S.; authorizing a substantially affected person to file a petition with the Florida Building Commission to review certain local government regulations, laws, ordinances, policies, amendments, or land use or zoning provisions; defining the term "local government"; providing requirements for the petition and commission; requiring the commission to issue a nonbinding advisory opinion within a specified timeframe; making technical changes; amending ss. 125.01 and 125.56, F.S.; conforming cross-references to changes made by the act; making technical changes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 163.3202, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:
163.3202 Land development regulations.—

(5)(a) Land development regulations relating to building design elements may not be applied to a single- or two-family dwelling unless:

1. The dwelling is listed in the National Register of Historic Places, as defined in s. 267.021; or is a contributing property to a National Register Historic District; or is designated as a historic property or a contributing property to a historic district, under the terms of a local preservation ordinance.

2. The regulations are adopted in order to implement the National Flood Insurance Program.

3. The regulations are adopted pursuant to and in compliance with chapter 553.

(b) For purposes of this subsection, the term "building design elements" means the external building color; type or style of exterior cladding material; style or material of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows or doors, including garage doors; number and type of rooms; and interior layout of rooms. The term does not include the height, bulk, orientation, or location of a structure on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.
(c) This subsection does not affect the validity or
enforceability of private covenants or other contractual
agreements relating to building design elements.

Section 2. Subsection (4) of section 553.73, Florida
Statutes, is amended to read:

553.73 Florida Building Code.—

(4)(a) All entities authorized to enforce the Florida
Building Code under pursuant to s. 553.80 shall comply with
applicable standards for issuance of mandatory certificates of
occupancy, minimum types of inspections, and procedures for
plans review and inspections as established by the commission by
rule. Local governments may adopt amendments to the
administrative provisions of the Florida Building Code, subject
to the limitations in of this subsection paragraph. Local
amendments must shall be more stringent than the minimum
standards described in this section herein and must shall be
transmitted to the commission within 30 days after enactment.
The local government shall make such amendments available to the
general public in a usable format. The State Fire Marshal is
responsible for establishing the standards and procedures
required in this subsection paragraph for governmental entities
with respect to applying the Florida Fire Prevention Code and
the Life Safety Code.

(b) Local governments may, subject to the limitations in
of this section and not more than once every 6 months, adopt
amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and provide for more stringent requirements than those specified in the Florida Building Code, not more than once every 6 months. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

(c) The enforcing agency shall make readily available,
in a usable format, all amendments adopted under pursuant to this section.

(d) Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the adopting local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are shall become effective until 30 days after the amendment has been received and published by the commission.

(e) An amendment to the Florida Building Code adopted by a local government under pursuant to this subsection is paragraph shall be effective only until the adoption by the commission of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under pursuant to the provisions of this subsection paragraph.

(f) Each county and municipality desiring to make local technical amendments to the Florida Building Code shall by interlocal agreement establish by interlocal agreement a countywide compliance review board to review any amendment to
the Florida Building Code that is adopted by a local government within the county under pursuant to this subsection and paragraph, that is challenged by any substantially affected party for purposes of determining the amendment's compliance with this subsection paragraph. If challenged, the local technical amendments are shall not become effective until the time for filing an appeal under paragraph (g) pursuant to subparagraph 8. has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) If the compliance review board determines such amendment is not in compliance with this subsection paragraph, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines such amendment is to be in compliance with this subsection paragraph, any substantially affected party may appeal such determination to the commission. Any such appeal must shall be filed with the commission within 14 days after of the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an
administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered thereafter. The provisions of Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection paragraph in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under pursuant to s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) An amendment adopted under this subsection paragraph shall include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and, as well as to industry, relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) In addition to paragraphs (f) and (g) subparagraphs 7. and 9., the commission may review any amendments adopted
under pursuant to this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) Any amendment adopted by a local enforcing agency under pursuant to this subsection may not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under pursuant to s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under pursuant to this subsection is not rendered void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code under pursuant to this subsection paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to
be a technical amendment to the Florida Building Code, then the substantially affected person may submit to the commission a petition for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:
   a. The name of the local government that enacted the
regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements...
of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. 120.565.

Section 3. Paragraph (bb) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01  Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not
inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(bb) Enforce the Florida Building Code as provided in s. 553.80 and adopt and enforce local technical amendments to the Florida Building Code as provided in s. 553.73(4), pursuant to s. 553.73(4)(b) and (c).

Section 4. Subsection (1) of section 125.56, Florida Statutes, is amended to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.

(1) The board of county commissioners of each of the several counties of the state may enforce the Florida Building Code and the Florida Fire Prevention Code as provided in ss. 553.80, 633.206, and 633.208 and, at its discretion, adopt local technical amendments to the Florida Building Code as provided in s. 553.73(4), pursuant to s. 553.73(4)(b) and (c) and local technical amendments to the Florida Fire Prevention Code as provided in, pursuant to s. 633.202, to provide for the safe construction, erection, alteration, repair, securing, and demolition of any building within its territory outside the corporate limits of any municipality. Upon a determination to consider amending the Florida Building Code or the Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a
public hearing and comply with the public notice requirements of s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission under pursuant to s. 553.73 or the State Fire Marshal under pursuant to s. 633.202. This subsection does not Nothing herein contained shall be construed to prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board.

Section 5. This act shall take effect July 1, 2020.